

a *prima facie* case of obviousness under 35 U.S.C. § 103(a), three basic criteria must be met. First, the prior art reference or references, taken alone or combined, must teach or suggest each and every element recited in the claims (see *M.P.E.P.* § 2143.03). Second, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the references in a manner resulting in the claimed invention (see *M.P.E.P.* § 2143). Third, a reasonable expectation of success must exist (see *M.P.E.P.* § 2143.02).

No *prima facie* case of obviousness has been established with respect to claims 1-13 and 16-18 for at least the reason that neither Kuras et al. nor Lukich, taken alone or in combination, discloses or suggests every claim element. For example, independent claims 1 and 16, from which claims 2-9 and 17-18 ultimately depend, recite a combination of elements including, among other things, a control system operable to limit desired transmission load applied to a driven member of a transmission based on the current output of the power source to thereby prevent the power source from operating outside of a desired operating range. In addition, independent claim 10, from which claims 11-13 depend, recites a method including, among other things, limiting the desired load applied to a driven member of the transmission based on the estimate of the current power output of the power source to prevent the power source from operating outside of a desired operating range. Neither Kuras et al. nor Lukich, taken alone or combined, disclose at least these claim elements.

As the Examiner correctly indicates, "Kuras [et al.] does not disclose a control system in communication with the power source and the transmission, wherein the control system is operable to...limit desired transmission load applied to the driven member of the transmission based on the current power output of the power source..." (see *Office Action mailed 10/05/2005, pages 2-3*).

Like Kuras et al., Lukich fails to disclose limiting the desired load applied to the driven member of the transmission based on the current power output of the power source to prevent the power source from operating outside of a desired operating range. In fact, Lukich fails to disclose or suggest a driven member or a transmission altogether. Instead, Lukich discloses adjusting an operation of an engine or a pump in response to a load change on a hydraulic system, which is not the same as limiting a load applied to a driven member of a transmission. By failing to even disclose a driven member or a transmission, Lukich necessarily also fails to disclose limiting a desired load applied to a driven member of a transmission to prevent the power source from operating outside a desired range.

Because neither Kuras et al. nor Lukich, taken alone or in combination, discloses or suggests every claim element of any of claims 1, 10, or 16, or claims 2-9, 11-13, and 17-18 that depend therefrom, no *prima facie* case of obviousness has been established with respect to claims 1-13 and 16-18. Accordingly, the 35 U.S.C. § 103(a) rejection of these claims is improper and should be withdrawn.

In view of the foregoing, Applicants respectfully request reconsideration and reexamination of this application and timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: December 14, 2005

By: 

Brad C. Rametta
Reg. No. 54,387